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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

Govt. of India 1974

LOK SABHA

The following Bill was introduced in Lok Sabha on the 2th February, 1974:—

BILL No. 12 OF 1974

A Bill to provide for the acquisition and transfer of the right, title and interest of Esso Eastern Inc. in relation to its undertakings in India with a view to ensuring co-ordinated distribution and utilisation of petroleum products distributed and marketed in India by Esso Eastern Inc. and for matters connected therewith or incidental thereto.

WHEREAS Esso Eastern Inc., a foreign company, is carrying on, in India the business of distributing and marketing petroleum products manufactured by Esso Standard Refining Company of India Limited and Lube India Limited, and has, for that purpose, established places of business at Bombay and other places in India;

AND WHEREAS it is expedient in the public interest that the undertakings, in India, of Esso Eastern Inc. should be acquired in order to ensure that the ownership and control of the petroleum products distributed and marketed in India by the said company are vested in the State and thereby so distributed as best to subserve the common good;

BE it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:—

CHAPTER I
PRELIMINARY

Short title.

1. This Act may be called the Esso (Acquisition of Undertakings in India) Act, 1974.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "appointed day" means the date of commencement of this Act;

(*b*) "Esso" means Esso Eastern Inc., a foreign company within the meaning of section 591 of the Companies Act, 1956, incorporated under the laws of the State of Delaware in the United States of America, and having its principal office at 2401 South Gessner, City of Houston, State of Texas, in the United States of America; 1 of 1956.

(*c*) "Esso Standard" means Esso Standard Refining Company of India Limited, being a company as defined in the Companies Act, 1956, and having its registered office at Administration Building, Mahul, Bombay 400 074; 1 of 1956.

(*d*) "Government company" means a company as defined in section 617 of the Companies Act, 1956; 1 of 1956.

(*e*) "Lube India" means Lube India Limited, being a company as defined in the Companies Act, 1956, and having its registered office at Administration Building, Corridor Road, Mahul, Bombay 400 074; 1 of 1956.

(*f*) "notification" means a notification published in the Official Gazette;

(*g*) "prescribed" means prescribed by rules made under this Act.

CHAPTER II
ACQUISITION OF THE UNDERTAKINGS IN INDIA OF ESSO

Transfer and vesting in the Central Government of the undertakings of Esso in India.

3. On the appointed day, the right, title and interest of Esso, in relation to its undertakings in India, shall stand transferred to, and shall vest in, the Central Government.

General effect of vesting.

4. (*1*) The undertakings referred to in section 3 shall be deemed, save as otherwise provided in sub-section (*2*), to include all assets, rights, powers, authorities and privileges and all property, movable and immovable, cash balances, reserve funds, investments and all other rights and interests in, or arising out of, such property as were, immediately before the appointed day, in the ownership, possession, power or control of Esso, in relation to its undertakings in India, and all books of account, registers, records and all other documents of whatever nature relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of Esso in relation to its undertakings in India.

(*2*) The undertakings referred to in sub-section (*1*) shall not include the following, namely:—

(*a*) any share held by Esso in the equity capital of Esso Standard of Lube India;

(*b*) any trade mark, and any right of Esso to use any trade mark in India, specified in the First Schedule;

(c) all patents and designs registered in India in the name of Esso.

(*3*) Unless otherwise expressly provided by this Act, all deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature in relation to the undertakings of Esso in India, subsisting or having effect immediately before the appointed day, and to which Esso is a party or which are in favour of Esso shall be of as full force and effect against or in favour of the Central Government and may be enforced or acted upon as fully and effectually as if in the place of Esso the Central Government had been a party thereto or as if they had been issued in favour of the Central Government.

(*4*) If, on the appointed day, any suit, appeal or other proceeding of whatever nature, in relation to the undertakings of Esso in India, which have been transferred to and vested in the Central Government under section 3, is pending by or against Esso, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertakings of Esso or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Central Government, or, where any undertaking is directed under section 7 to vest in any Government company, against the concerned Government company.

Central Government to be lessee or tenant under certain circumstances.

5. (*1*) Where any property is held in India by Esso under any lease or under any right of tenancy, the Central Government shall, on and from the appointed day, be deemed to have become the lessee or tenant, as the case may be, in respect of such property as if the lease or tenancy in relation to such property had been granted to the Central Government, and thereupon all the rights under such lease or tenancy shall be deemed to have been transferred to and vested in the Central Government.

(*2*) On the expiry of the term of any lease or tenancy referred to in sub-section (*1*), such lease or tenancy shall, if so desired by the Central Government, be renewed on the same terms and conditions on which the lease or tenancy was held by Esso immediately before the appointed day.

Removal of doubts.

6. (*1*) For the removal of doubts, it is hereby declared that the provisions of sections 3, 4 and 5 shall apply to the extent to which any property appertains to the business carried on by Esso in India; and to the rights and powers acquired, and to debts, liabilities and obligations incurred, and to contracts, agreements and other instruments made, by Esso in India, and to legal proceedings relating to those matters pending in any court or tribunal in India.

(*2*) If any question arises as to whether any property appertains, on the appointed day, to any business of Esso in India, or, whether any rights, powers, liabilities or obligations were acquired or incurred or any contract, agreement or other instrument was made by Esso for the purposes of its business in India, or whether any documents relate to those purposes, the question shall be referred to the Central Government which shall, after giving an opportunity of being heard to the persons interested in the matter, decide it in such manner as it may think fit.

Power of Central Government to

7. (*1*) Notwithstanding anything contained in sections 3, 4 and 5, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as

direct vesting of the undertakings of Esso in a Government company.

that Government may think fit to impose, direct, by notification, that the right, title and interest and the liabilities of Esso in relation to any undertaking in India shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.

(2) Where the right, title and interest and the liabilities of Esso in relation to its undertakings in India vest in a Government company under sub-section (1), the Government company shall, on and from the date of such vesting, be deemed to have become the owner, tenant or lessee, as the case may be, in relation to such undertakings, and all the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government company.

(3) The provisions of sub-section (2) of section 5 shall apply to a lease or tenancy, which vests in a Government company, as they apply to a lease or tenancy vested in the Central Government and reference therein to the "Central Government" shall be construed as a reference to the Government company.

Payment of amount.

6. (1) For the transfer and vesting in the Central Government, under sections 3 and 4, of the right, title and interest of Esso in relation to its undertakings in India, and for the vesting in the Central Government, under section 5, of the rights specified therein, there shall be paid by the Central Government to Esso an amount of rupees two crores and fifty-nine lakhs in such instalments and in such manner as is specified in the Second Schedule.

(2) The amount specified in sub-section (1) shall carry interest, free of income-tax, at the rate of six and a half per cent. per annum from the appointed day till the date of payment in the manner specified in the Second Schedule.

CHAPTER III

PROVISIONS RELATING TO EMPLOYEES OF ESSO

Transfer of service of existing employees of Esso.

9. (1) Every whole-time officer or other employee of Esso who was, immediately before the appointed day, employed by Esso in connection with its undertakings in India, and every whole-time officer or other employee of Esso who was, immediately before the appointed day, temporarily holding any assignment outside India, shall, on the appointed day, become an officer or other employee, as the case may be, of the Central Government or, as the case may be, the Government company in which the right, title and interest of Esso in relation to its undertakings in India have vested under this Act and shall hold office or service under the Central Government or the Government company, as the case may be, on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the Central Government or the Government company, as the case may be, is duly terminated or until his remuneration and conditions of service are duly altered by the Central Government or the Government company, as the case may be.

(2) If any question arises as to whether any person was a whole-time officer or other employee or as to whether any officer or other employee

was employed wholly or mainly in connection with the undertakings of Esso in India immediately before the appointed day, or whether any whole-time officer or other employee of Esso was temporarily holding any assignment outside India, the question shall be referred, within a period of two years from the appointed day and not thereafter, to the Central Government which shall, after giving an opportunity of being heard to the person concerned in the matter, decide it in such manner as it thinks fit and such decision shall be final.

14 of 1947. 39 of 1972.

(3) Notwithstanding anything contained in the Industrial Disputes Act, 1947, the Payment of Gratuity Act, 1972, or in any other law for the time being in force, the transfer of the services of any officer or other employee under sub-section (1) shall not entitle any such officer or other employee to any compensation or gratuity under those Acts or such other law, and no such claim shall be entertained by any court, tribunal or other authority.

Provident, superannuation, welfare fund, etc.

10. (1) Where a provident, superannuation, welfare or other fund has been established by Esso for the benefit of the persons employed by it in connection with its undertakings in India, the moneys relatable to the employees, whose services are transferred by or under this Act to the Central Government or a Government company, shall, out of the moneys standing, on the appointed day, to the credit of such provident, superannuation, welfare or other fund, stand transferred to and vest in the Central Government or the Government company, as the case may be, free from any trust that may have been constituted by Esso in respect thereof.

(2) The moneys which stand transferred, under sub-section (1), to the Central Government or a Government company shall be dealt with by the Central Government or that company, as the case may be, in such manner as may be prescribed.

(3) The Government company in which the undertakings of Esso in India are directed to be vested shall, as soon as may be after the date of vesting, constitute, in respect of the moneys and other assets which are transferred to and vested in it under this section, one or more trusts having objects as similar to the objects of the existing trusts as in the circumstances may be practicable, so, however, that the rights and interests of the beneficiaries of the trust referred to in sub-section (1) are not, in any way, prejudiced or diminished.

(4) Where all the moneys and other assets belonging to an existing trust are transferred to and vested in the Central Government or a Government company under this section, the trustees of such trust shall, as from the date of such vesting, stand discharged from the trust except as respects things done or omitted to be done before the date of such vesting.

CHAPTER IV

MISCELLANEOUS

Effect of Act on other laws.

11. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act or in any decree or order of any court, tribunal or other authority.

Duty to deliver possession of properties, etc.

12. (*1*) Where any property, appertaining to any undertaking of Esso in India has been transferred to, and vested in, the Central Government or a Government company under this Act:—

(*a*) every person in whose possession, custody or control any such property may be, shall, on a demand by the Central Government or the Government company, as the case may be, deliver the property to the Central Government or the Government company, as the case may be, forthwith;

(*b*) any person who, immediately before such vesting, has in his possession, custody or control any books, documents or other papers relating to the undertakings of Esso in India, shall be liable to account for the said books, documents and papers to the Central Government or the Government company, as the case may be, and shall deliver them up to the Central Government or that company or to such person as the Central Government or that company may authorise in this behalf.

(*2*) Without prejudice to the other provisions contained in this section, it shall be lawful for the Central Government or the Government company to take all necessary steps for taking possession of all properties which have been transferred to and vested in it under this Act.

Contracts to continue unless terminated by Central Government.

13. (*1*) Every contract entered into by Esso for any service, sale or supply in India, and in force immediately before the appointed day, shall, unless terminated, under sub-section (*2*), within one hundred and eighty days from the appointed day, continue to be of full force and effect against or in favour of the Central Government or the Government company in which the undertakings of Esso in India have vested under this Act.

(*2*) The Central Government may, if it is satisfied that any contract referred to in sub-section (*1*) is unduly onerous or has been entered into in bad faith or is detrimental to the interests of that Government or the Government company, by order in writing, either terminate such contract or make such alterations or modifications therein as it may think fit:

Provided that the Central Government shall not terminate any contract or make any alteration or modification therein except after giving to the parties to the contract a reasonable opportunity of being heard and except after recording, in writing, its reasons for such termination, alteration or modification, as the case may be.

Penalties.

14. Any person who,—

(*a*) having in his possession, custody or control any property forming part of any undertaking of Esso in India, wrongfully withholds such property from the Central Government or the Government company; or

(*b*) wrongfully obtains possession of or retains any property forming part of any undertaking of Esso in India; or

(*c*) wilfully withholds or fails to furnish to the Central Government or the Government company or any person specified by the Central Government or that company, any books, documents or other papers relating to any undertaking of Esso in India which may be in his possession, custody or control; or

(*d*) fails to deliver to the Central Government or the Government company any assets, books of account, registers or other documents in his possession, custody or control relating to any undertaking of Esso in India; or

(*e*) wrongfully removes or destroys any property pertaining to any undertaking of Esso in India; or

(*f*) wrongfully uses any property forming part of the undertakings of Esso in India,

shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both.

Offences by companies.

15. (*1*) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(*a*) "company" means any body corporate and includes a firm or other association of individuals; and

(*b*) "director", in relation to a firm, means a partner in the firm.

Protection of action taken in good faith.

16. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Government company for anything which is in good faith done or intended to be done under this Act.

Cognizance of offences.

5 of 1898.

17. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no court shall take cognizance of any offence against this Act except on a complaint, in writing, made by the Central Government or any officer authorised in this behalf by that Government.

Indemnity.

18. Every officer of the Central Government and every officer or other employee of the Government company shall be indemnified by the Central Government or the Government company, as the case may be, against all losses and expenses incurred by him in, or in relation to, the discharge of his duties under this Act except such as have been caused by his own wilful act or default.

Power to remove difficulties.

19. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the appointed day.

Power to make rules.

20. (*1*) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(*2*) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

THE FIRST SCHEDULE

[*See* section 4(*2*)]

TRADE MARKS WHICH ESSO IS ENTITLED TO USE IN INDIA AND WHICH SHALL NOT VEST IN THE CENTRAL GOVERNMENT OR THE GOVERNMENT COMPANY

(*a*) The right of Esso to use in India the Trade Marks registered under the Trade and Merchandise Marks Act, 1958, by Exxon Corporation, a Corporation incorporated in the State of New Jersey, United States of America, and having its principal office in New York, United States of America. 43 of 1958.

(*b*) All Trade Marks registered in India by Esso under the Trade and Merchandise Marks Act, 1958. 43 of 1958.

THE SECOND SCHEDULE

(*See* section 8)

1. The amount specified in section 8 shall be deemed to correspond to thirty lakhs, eighty-four thousand, six hundred and ninety dollars (hereafter in this Schedule referred to as the principal amount).

2. The amount referred to in the foregoing paragraph and the interest due thereon shall be remitted by the Central Government to Esso at its principal office at 2401 South Gessner, City of Houston, State of Texas, in the United States of America, on the dates and in instalments specified in the corresponding entries in the Table below, namely:—

THE TABLE

Date of payment	*Instalments*
(*i*) First anniversary of the appointed day.	200,504.85 dollars towards interest on the principal amount.
(*ii*) Second anniversary of the appointed day.	(*i*) 2,691,660.00 dollars towards the principal amount, and (*ii*) 200,504.85 dollars towards interest.
(*iii*) Third anniversary of the appointed day.	(*i*) 393,030.00 dollars towards the principal amount, and (*ii*) 25,546.95 dollars towards interest.

Explanation.—In this Schedule, "dollar" means the unit of currency in the United States of America.

STATEMENT OF OBJECTS AND REASONS

The object of the present Bill is to acquire the undertakings in India of Esso Eastern Inc., a foreign company which has established a branch in India and which carries on the business of distributing and marketing petroleum products manufactured by Esso Standard Refining Company Limited and Lube India Limited and also to take over the liabilities of Esso Eastern Inc. in relation to its undertakings in India. Government has entered into negotiations with Esso Eastern Inc. for acquiring a 74 per cent interest in Esso Standard Refining Company of India Limited (which is a wholly owned subsidiary of Esso Eastern Inc.) and a 24 per cent interest in Lube India Limited wherein the Government and Esso Eastern Inc. hold the equity share capital in equal shares. It is proposed in the first place to take over all the Indian assets and liabilities (not including the shares held by Esso Eastern Inc. in either of the said companies and its trade marks and patents registered in India) and to vest them in the Central Government. The said assets will include leases and tenancy rights held by Esso Eastern Inc. in India. The Bill provides that the Central Government may, by notification, vest the said assets and liabilities in a Government company and it is proposed that as soon as the acquisition of 4 per cent of the shares of Esso Standard Refining Company of India Ltd. in favour of the Government is completed (thereby making it a Government company), the Indian assets and liabilities of Esso Eastern Inc. will be vested by notification in Esso Standard Refining Company of India Limited.

The Bill makes incidental provisions for the transfer of the services of the existing employees of Esso Eastern Inc. and of the provident, superannuation and welfare funds of such employees to the said Government company. The Bill also provides that all contracts entered into by Esso Eastern Inc. for any service, sale or supply in India and in force immediately before the appointed day, shall continue, unless terminated by the Central Government. Power is given by the Bill to the Central Government to terminate certain unduly onerous contracts as provided in clause 13 of the Bill.

D. K. BOROOAH.

NEW DELHI;
The 12th February, 1974.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE CONSTITUTON OF INDIA

[Copy of letter No. 21(48)/72-IOC. VOL. IV, dated the 18th February, 1974, from Shri Dev Kanta Borooah, Minister of Petroleum and Chemicals, to the Secretary-General, Lok Sabha.]

The President having been informed of the subject-matter of the Bill to provide for the acquisition and transfer of the right, title and interest of Esso Eastern Inc. in relation to its undertakings in India with a view to ensuring co-ordinated distribution and utilisation of petroleum products distributed and marketed in India by Esso Eastern Inc. and for matters connected therewith or incidental thereto, recommends under articles 117(1) and 274(1) of the Constitution of India, the introduction of the Bill in the Lok Sabha and also recommends under article 117(3) of the Constitution of India, the consideration of the Bill by the Lok Sabha.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides that on the appointed day the right, title and interest of Esso Eastern Inc. in relation to its undertakings in India, shall vest in the Central Government. Clause 8 of the Bill provides that for the said vesting of the right, title and interest of Esso Eastern Inc. in relation to its undertakings in India and the lease-hold and other rights which have vested in it under clause 5, there shall be paid by the Central Government to Esso Eastern Inc., an amount of rupees two crores and fifty-nine lakhs in such instalments and in such manner as is specified in the Second Schedule to the Bill. This amount is proposed to be paid with interest (free of income-tax) at the rate of 6½ per cent per annum from the appointed day till payment. The Second Schedule provides that the said amount of Rs. 2.59 crores specified in clause 8 shall be deemed to correspond to U.S. dollars 30,84,690 and shall be payable in dollars. This amount is payable by the Central Government to Esso Eastern Inc. at its office in USA on the dates and in the instalments specified in the Table annexed to the Second Schedule.

The Bill, if enacted, will involve a total non-recurring expenditure of Rs. 2,59,00,000 on account of principal and Rs. 35.82 lakhs on account of interest which will correspond to U.S. dollars 30,84,690 and U.S. dollars 4,26,557, respectively, at the exchange rate of Re. 1=U.S. $.1191, being the Reserve Bank of India selling rate of exchange for U.S. dollar prevailing on the 5th February, 1974.

The Bill, if enacted, will not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Under sub-clause (1) of clause 10 of the Bill, where a provident, superanuation, welfare or other fund has been established by Esso for the benefit of the persons employed by it in connection with its undertakings in India, the monies relatable to the employees whose services are transferred, by virtue of the provisions of the Bill, to the Central Government, shall stand transferred to and vest in the Central Government.

Under sub-clause (2) of that clause, the Central Government is empowered to make rules as to the manner in which such monies shall be dealt with by that Government. The matters in respect of which such rules may be made are matters of detail and can hardly be provided for in the Bill itself. The delegation of the legislative power is, therefore, of a normal character.

S. L. SHAKDHER,
Secretary-General

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